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Letter dated 3 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 May 2003 (S/2003/531).

The Counter-Terrorism Committee has received the attached third report from Bosnia and Herzegovina submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 1 July 2003 from the Permanent Mission of Bosnia and Herzegovina to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Bosnia and Herzegovina to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and has the honour to enclose the response of the Government of Bosnia and Herzegovina to the letter of the Committee dated 4 March 2003 (see enclosure). In addition, the Permanent Mission of Bosnia and Herzegovina has the honour to inform you that Bosnia and Herzegovina has deposited the instrument of ratification of the International Convention for the Suppression of the Financing of Terrorism (1999) on 10 June 2003.

Enclosure

Question

1. Taking into consideration the federal state structure of Bosnia and Herzegovina, the Counter-Terrorism Committee (CTC) would like to get confirmation that the federal government (Council of Ministers) is responsible for implementation of resolution 1373 (2001), as well as of all other counter-terrorist measures and activities of Bosnia and Herzegovina.

Answer

According to the Constitution of Bosnia and Herzegovina, foreign policy is within the jurisdiction of Bosnia and Herzegovina institutions, and entities are obliged to support Bosnia and Herzegovina in order to enable it to meet international obligations.

Question

2. Effective implementation of resolution 1373 (2001) requires member countries, in their legislature, to have provisions that criminalize actions by their citizens to collect and distribute financial funds which will or could be used for financing terrorist activities. Since this has not been mentioned in the report submitted by Bosnia and Herzegovina, CTC would like to know which are the existing provisions in positive regulations through which the activities that the Government intends to undertake in this context are criminalized. This is of particular importance having in mind that it has been mentioned in the first report that Bosnia and Herzegovina intends as soon as possible to ratify the United Nations Convention for the Suppression of the Financing of Terrorism.

Answer

The Criminal Code of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, No. 3/03) anticipates financing of terrorist activities as a specific criminal act with a mandatory punishment of 7 to 10 years (article 202).

Question

3. Paragraph 1 (c) of resolution 1373 (2001), among other things, asks member countries, without delay, to freeze financial resources of the persons who perpetrate, try to perpetrate, participate in or support perpetration of terrorist acts. It has been mentioned in the first report that Vakufska Banka has frozen the financial resources of Saudi Arabia citizens. CTC would like to have an explanation of the legal provisions according to which such a measure has been undertaken and the abstract of those provisions' text as well.

Answer

Articles 110, 111 and 140 of the Criminal Code of Bosnia and Herzegovina envisage the confiscation of material gain acquired by the perpetration of a criminal offence, including the basis and method of confiscation as well as protection of the damaged. According to article 73 of the Criminal Procedure Code of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, No. 3/03) the Court of

Bosnia and Herzegovina may, at any time during the proceedings, upon the motion of the Prosecutor, issue a temporary measure seizing illicitly gained property under the Criminal Code of Bosnia and Herzegovina or take other necessary temporary measures to prevent the use, transfer or disposal of such property. The Criminal Procedure Codes of Entities contain similar provisions.

Question

4. CTC would like to have an abstract of the text of legal and administrative regulations that prescribe for financial institutions, lawyers, notaries and bookkeepers that participate in financial transactions to report each suspicious transaction. If there are no such regulations, what are the measures Bosnia and Herzegovina intends to undertake in regard to enacting them?

Answer

The Ministry of Finance and Treasury of Bosnia and Herzegovina has been included into drafting the Law on the Prevention of Money-Laundering at the state level, since this issue has been considered only at entity levels.

Entities of the Republika Srpska and Bosnia and Herzegovina have enacted laws on the prevention of money-laundering. The Republika Srpska controls this through the Ministry of Finance Sector on the Prevention of Money-Laundering, and Bosnia and Herzegovina deals with this issue through the Financial Police.

The content of the provisions of article 5 of the Law on the Prevention of Money-Laundering in Bosnia and Herzegovina has established the obligation for banks, savings banks, savings-credit unions, investment funds and other financial institutions and organizations to managing the audit offices, privatization agencies, insurance companies, stock markets and other financial institutions authorized to perform transactions involving securities, exchange offices, pawnbroker's shops, gambling houses, pinball parlours, organizations of award games, shopkeepers, craftsmen and legal persons dealing with receiving money deposits, selling and buying debit and credit, managing property for third parties, issuing payment orders, dealing with payment orders, leasing, organization of journeys, property transactions, works of art, antiques and other objects of high value, and processing precious metals and precious stones, to undertake legal measures for detection and prevention of money-laundering. Those measures involve the obligation of the above-mentioned, in appropriate proceedings, to identify those who require transactions and report them to the Financial Police of Bosnia and Herzegovina, especially ready money transactions whose value exceeds 30,000 convertible marka (KM) as well as related transactions whose value, disregarding the time limit, exceeds 30,000 KM. The same relates to all other transactions for which it has been established by the indicator that there is a suspect of money-laundering.

Lawyers and lawyer's offices as well as notaries have not been included in the existing law on the prevention of money-laundering as persons having an obligation to prevent money-laundering, even though it has been an international standard. Since the initiative for changing this law has been proposed, the mentioned professions and activities will be obliged to undertake measures for detecting and prevention of money-laundering.

In addition, modified article 47 of the Law on Banks has established rigorous internal and external obligations and procedures for banks as institutions having an obligation to prevent and detect money-laundering and, under the motion of Financial Police and Federal Banking agency to promptly block bank accounts of legal and natural persons.

The Steering Committee of the Federal Banking Agency has made a binding decision on minimum standards of banks' activities in preventing money-laundering and financing terrorism. Minimum standards for the extent, form and content of banks' activities have been established regarding the prevention of money-laundering and financing terrorism.

On the authority of the Law on the Prevention of Money-Laundering (*Official Gazette of Republika Srpska*, No. 52/01), the Ministry of Finance Sector for Prevention of Money-Laundering and Public Procurement deals with suspected money transactions of financial institutions.

According to article 5 of this law, subjects obliged to implement the measures and activities in detecting and prevention of money-laundering are as follows:

- Banks, savings banks and savings-credit unions;
- Investment funds and associations and other financial institutions;
- Organizations authorized for dealing with audit offices;
- Privatization directorates;
- Insurance companies;
- Stock markets and other financial institutions authorized for dealing with securities;
- Exchange offices;
- Pawnbrokers shops;
- Gambling houses, pinball parlours, organization of award games etc.

Question

5. CTC would like to be informed of the existing legal and administrative mechanisms that register, examine (propose inspection) or audit the collection and use of financial resources by charitable, religious, cultural and other (non-profit) organizations in order to avoid misuse of these resources in terrorist purposes.

Answer

The Ministry of Finance and Treasury has been involved in drafting the Law on the Prevention of Money-Laundering at the state level, since this issue has been considered only at entity levels.

Entities of the Republika Srpska and Bosnia and Herzegovina have enacted laws on the prevention of money-laundering. The Republika Srpska controls this through the Ministry of Finance Sector on the Prevention of Money-Laundering, and Bosnia and Herzegovina deals with this issue through the Financial Police.

The Law on Associations and Foundations of Bosnia and Herzegovina has regulated the foundation, registration, internal organization, supervision and cessation of the work of associations and foundations.

In addition to this law, federal laws on financial transactions in Bosnia and Herzegovina concerning accounting, inspection, prevention of money-laundering, banks, Government and ministries, administration, Financial Police, the Banking Agency and the internal payroll office have also regulated issues relating to the control and audit of operating and transactions that include the above-mentioned associations and foundations, as well as measures to be undertaken in the case of irregularities and illegal transactions.

Activities relating to drafting and enacting the Law on Religious Freedoms and Legal Position of Churches and Other Religious Communities are in progress in the Republika Srpska. The inter-religious Council of Bosnia and Herzegovina has also discussed this issue. After they give their opinions and proposals final draft of the mentioned law will be made by the authorities of the Republika Srpska.

Question

6. Effective implementation of paragraph 2 (a) of the resolution prescribes for member countries to stamp out recruiting terrorists in or outside the country, as well as to eliminate supplying terrorists with weapons. In this context, CTC would like to know:

- Which of the existing provisions regulate the production, selling, buying possession, storage, import and export of weapons, ammunition and explosives.

Answer

Taking into account that Bosnia and Herzegovina as a United Nations member country and the subject of international law is obliged to accept and implement decisions of the Security Council, international conventions and other obligations regarding the import, export and transit of weapons and military equipment, upon the proposal of the Council of Ministers, the Parliamentarian Assembly of Bosnia and Herzegovina has adopted the Law on Export and Import of Weapons and Military Equipment.

In terms of this law, weapons and military equipment as well as their spare parts include all those specified in the common list of military equipment included in the European Union Code of Conduct regarding treatment with export of weapons.

This law prescribes method and conditions under which the import, export and transit of weapons and military equipment can be carried out; defines weapons and military equipment; assigns the authority responsible for issuing import, export and transit permits and intervening in the turnover of weapons and military equipment, as well as the turnover of services related to weapons and military equipment and the conditions under which those permits could be issued; defines the content of these permits; specifies the authorities responsible for issuing written agreement and opinions and the obligations of competent authorities and cooperation with international organizations; suggests terms concerning cooperation relating to research, advanced training and technical exchange in regard to weapons and

military equipment; and establishes the competence of the Ministry of Foreign Trade and Economic Relations and Customs Authorities in the implementation of this law and sentences that may be pronounced in the case of violating provisions of this law.

For the purposes of the implementation of the Law on Export and Import of Weapons and Military Equipment implementation, the drafting of sub-Acts resulting from the Law is in progress.

All physical and legal persons involved in the import, export, transit or intervening in the turnover of weapons and military equipment will be registered with the Ministry of Foreign Trade and Economic Relations. Registration procedure has been prescribed by the Ministry's instructions.

As to permits for export, import, transit or intervening in the weapons and military equipment turnover, end-user certificates/international import certificates must be submitted to this Ministry. Instructions also regulate intervening in weapons and military equipment turnover. Intervening in weapons and military equipment turnover means the activity by which a physical or legal person, permanently or temporarily located within the borders of Bosnia and Herzegovina, enables or organizes the weapons and military equipment turnover, located within/or outside Bosnia and Herzegovina, to the other country.

The permit of the Ministry of Foreign Trade and Economic Relations has been necessary for weapons and military equipment turnover.

The Ministry issues permits for all kinds of temporary import and export and re-export in accordance with the instructions prescribed by the Ministry.

Contracts on production cooperation, as well as on cooperation relating to research, advanced training and technical exchange in regard to weapons and military equipment, disregarding the in-force period, will be registered with the Ministry of Foreign Trade and Economic Relations.

For acquiring permits for export, import, transit or intervening in the weapons and military equipment turnover or the turnover of services related to weapons and military equipment, previous written agreement of the Ministry of Foreign Affairs of Bosnia and Herzegovina and the Ministry for Security of Bosnia and Herzegovina have been necessary.

In this context, the Ministry of Foreign Affairs on Bosnia and Herzegovina takes into account:

- Security Council bans and sanctions
- Accepted international obligations, international political interests and specific interests of Bosnia and Herzegovina in relation to strategic international political partners of Bosnia and Herzegovina
- The EU code of conduct on treating the export of weapons
- The non-proliferation principle of the weapons of massive destruction
- Respect for human rights

The Bosnia and Herzegovina Ministry for Security confirms that permit issuance will not endanger public security in Bosnia and Herzegovina. In the interest

of public security, the Ministry may ask responsible state and entity authorities for a special audit of the weapons and military equipment transport.

The Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina has established a database on the permits issued in accordance with the law and provides to the Bosnia and Herzegovina Parliamentarian Assembly and the Presidency a report on issued permits as well as to the other international subjects in Bosnia and Herzegovina.

The database includes:

- A review of export permits issued in accordance with the law and the list of weapons and military equipment and the country of origin
- A review of the export of weapons and military equipment, citing weapons and military equipment types, destination and annual total value of all the export jobs
- Other information regarding the import and export of weapons and military equipment that Bosnia and Herzegovina is obliged to provide in accordance with international law and international obligations

The drafting process of a law on weapons and military equipment production that will regulate licensing and inspection of the products at the state level is still in progress.

Question

7. CTC asks for an abstract of the provisions from the draft law on immigration and asylum by which shelter has been refused for those who finance, plan, support or perpetrate terrorist acts, as it has been envisaged by paragraph 2 (c) of the resolution.

Answer

The proposed law on movement and residence of foreigners and asylum includes provisions by which residence in Bosnia and Herzegovina would be refused for foreigners who undertake activities, whether as organizers or members of organizations dealing with this issue, and which are opposite to the constitutional order and regulations of Bosnia and Herzegovina.

- Article 27, paragraph 1, item (b) says that visas shall be abolished if a foreigner endangers the national interests of Bosnia and Herzegovina by dealing, among other things, with smuggling firearms, explosives, radioactive materials or drugs or illegal transport and trafficking of materials and equipment for production of weapons or other means of mass destruction or is a member of an organization dealing with the said activities.
- Article 46 of the said law prescribes that the right to stay and the residence permit (permanent or temporary) will be abolished if a foreigner does not obey the constitutional order and regulations of Bosnia and Herzegovina and its entities and Brcko District, or undertakes activities through which he/she undermines the constitutional order or security of Bosnia and Herzegovina or is a member of an organization dealing with the said activities.

- Article 56 of the said law prescribes that a foreigner may be expelled from Bosnia and Herzegovina if he, by the sentence in effect, has been pronounced guilty because of criminal acts having, among other things, characteristics of terrorism or any other form of organized crime.

- Furthermore, article 58 of the same law prescribes that the Council of Ministers of Bosnia and Herzegovina may, upon the explained proposal of the state ministry or competent entity of the Ministry of Interior, proceeding from some individual cases, exceptionally make a decision on expelling the foreigner from Bosnia and Herzegovina, if it judges that expulsion is necessary in the interest of public order or is based on reasons of national security, in terms of the provision of article 1, paragraph 2 of Protocol No. 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Question

8. Paragraph 2 (d) of the resolution prescribes for the member countries to prevent use of their territory for preparation, financing or support to terrorist activities against other countries or their citizens. CTC asks for an abstract of the text of regulations through which such activities has been criminalized, and if there are no such regulations what are the activities to be undertaken for this purpose. Paragraph 2 (e) prescribes the obligation of persecution and punishment for perpetrators of these acts as well as the obligation for the provisions of local criminal law to exemplary reflect the severity of these acts. The same question: in what way does Bosnia and Herzegovina intend to implement the provisions of this paragraph of the resolution?

Answer

While working on the (new) criminal code of Bosnia and Herzegovina, paragraph 2 of the resolution has been taken into account. The establishment of the criminal code of Bosnia and Herzegovina has been fully observed by the Office of the High Representative and many eminent experts in this field, whether local or the international ones. The Bosnia and Herzegovina Court has started working recently and the effects of new legal solutions will be visible in the future. Before enacting the criminal code of Bosnia and Herzegovina, terrorist activities were penalized under entity laws. This law, of course, has defined criminal acts in detail, as well as sanctions for perpetrators of those acts and, for the first time in our legal system, it has provided some privileges for persons participating in criminal acts but who contribute to the detection of such criminal acts and perpetrators of those acts. We think that these new solutions will give concrete results in the prevention of supporting terrorist activities in Bosnia and Herzegovina and in other countries as well.

Question

9. Can the existing provisions of Bosnia and Herzegovina criminal legislation be applied in cases:

- That a terrorist act has been perpetrated outside the territory of Bosnia and Herzegovina by a person who is a Bosnia and Herzegovina citizen or who

periodically resides in Bosnia and Herzegovina, regardless of whether such a person is currently in the territory of Bosnia and Herzegovina?

- That a foreign citizen who is currently in the territory of Bosnia and Herzegovina has perpetrated a terrorist act outside Bosnia and Herzegovina?

Answer

According to article 11 of the criminal code of Bosnia and Herzegovina, the criminal legislation of Bosnia and Herzegovina is applied to all those (home citizen or a foreigner) who, in the territory of Bosnia and Herzegovina, in domestic ships or airplanes, perpetrate a criminal act. According to article 12 of the same law, criminal legislation is applied even to foreigners who outside the territory of Bosnia and Herzegovina perpetrate criminal acts if Bosnia and Herzegovina, according to the regulations of international law, is obliged to penalize such an act or if such an act can be subject to a sentence of five years of imprisonment or a more severe punishment.

Question

10. CTC would like to know what legal and other measures enable state authorities to provide assistance in investigation and court trial led by the authorities of other countries, as it stands in paragraph 2 (f).

Answer

The provision of legal assistance led by the authorities of other countries has been established by chapter XXX of the Law on the Criminal Procedure and Entity Laws on Criminal Procedure. Furthermore, Bosnia and Herzegovina has taken over all international agreements in the field of legal assistance of which former Yugoslavia was to be a member.

Question

11. Cite the existing measures undertaken in cooperation and in exchange of information between Bosnia and Herzegovina and other countries concerning issues related to terrorism.

Answer

Interpol, as the biggest and most efficient international criminal police organization, has been actively included in fighting against terrorism. After terrorist attacks in America, September 2001, the Interpol Secretary-General has undertaken many efficient activities aiming at assistance in preventing terrorist acts.

Among other things, upon the initiative of the Secretary-General of Interpol, the so-called audit list of terrorism has been established and made available for all the member countries (national central bureaux and other authorized users) at the protected Interpol web site. This list serves the purpose of providing member countries with updated information on stolen passports and international wanted circulars sent out for some persons (red, blue, green or diffuse) because of terrorist acts or activities. Our office uses information from this database for the needs of local police. The advantage of this database compared to other Interpol databases is

the possibility of a faster check-up without having to precisely state the reasons for obtaining such information (compulsory while consulting other Interpol databases).

Furthermore, in September 2002, the Interpol Secretary-General established a multidisciplinary group for the fight against terrorism, directly under the audit of the Director Executive and in charge of establishing and developing a multidisciplinary methodology for the purpose of providing assistance to the member countries in their investigations connected to terrorism.

Member countries have appointed their liaison officers, thanks to whom they cooperate with the multidisciplinary group for the fight against terrorism. Our office appointed a liaison officer in November 2002.

The multidisciplinary group for the fight against terrorism has been established for the purpose of assisting member countries in identifying members of criminal groups involved in international terrorist activities and may serve as a catalyst for collecting information on the groups and key persons involved in the activities of international organized crime (weapons, international drugs trafficking, economic crime, stealing and use of false passports), who support and facilitate terrorism. The multidisciplinary group for the fight against terrorism makes analytic reports about the aforementioned based on data and information it possesses or collects from other sources. Data and information provided to the Interpol Secretary-General by our office have been used in some of those analytic reports. We have also provided information at the request of the Federal Ministry of the Interior, the Ministry of Interior of the Republika Srpska and the police of Brcko District.

Question

12. Has extradition been regulated by local legislation or carried out on the grounds of bilateral agreements? Is the call of terrorist acts' perpetrators for political justification the reason for extradition to be refused?

Answer

Extradition has been established by chapter XXXI of the Law on Criminal Procedure of Bosnia and Herzegovina. These provisions are of subsidiary character and are applied if not otherwise regulated by international agreement. Bosnia and Herzegovina has taken over all international agreements in the field of extradition of which former Yugoslavia was a member.

Question

13. Paragraph 3 (d) prescribes for the member countries to as soon as possible ratify all relevant conventions relating to terrorism. What are the next steps Bosnia and Herzegovina intends to undertake in order to become a signatory of the conventions it has not signed yet?

Answer

The procedure of signing international agreements has been established by the Law on the Procedure of Concluding and Execution of International Agreements (*Official Gazette of Bosnia and Herzegovina*, No. 29/2000). The Bosnia and Herzegovina Ministry of Justice, as the responsible ministry, will initiate proceedings for joining international conventions relating to terror of which Bosnia and Herzegovina is not yet a member.